**BEFORE THE BOARD OF OIL, GAS AND MINING**
**DEPARTMENT OF NATURAL RESOURCES**
**STATE OF UTAH**

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| IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF INTERNATIONAL PETROLEUM LIMITED LIABILITY COMPANY, ET AL, FOR A HORIZONTAL DRILLING UNIT FOR THE PRODUCTION OF OIL AND GAS FROM THE TUNUNK MEMBER CONSISTING OF SECTION 11, TOWNSHIP 15 SOUTH, RANGE 3 EAST, S.L.M., SANPETE COUNTY, UTAH | **OBJECTION TO MOTION TO CONTINUE HEARING**<br><br>Docket No. 2015-009<br><br>Cause No. 176-06 |

COMES NOW, International Petroleum Limited Liability Company ("IPLLC") and Bro Energy, LLC ("Bro," collectively, "Petitioners"), acting by and through their attorney, Anthony T. Hunter, pursuant to Utah Admin. Rule R641-105-300, hereby file this Objection to Motion to Continue Hearing ("Objection") with the Board of Oil, Gas and Mining (the "Board"), requesting that the Board deny the Motion to Continue Hearing ("Motion") filed by Whiting Oil and Gas Corporation ("Whiting" or "Respondent") on February 10, 2015. In support of their Objection, the Petitioners respectfully state and represent:

1. Given the failure of Respondent (or its predecessors in interest) to properly notify all "owners" (as defined by Utah Admin. Rule R649-1-1) within the temporary spacing unit (also as defined by Utah Admin. Rule R649-1-1) when it submitted its Application for Permit to Drill on July 14, 2014, the discussion about correlative rights under the captioned Section is already seven months behind schedule. There is no regulatory consequence for evading or neglecting this notice requirement, nor even a discernible State policy mechanism to check for compliance, that the undersigned could locate. Therefore, a timely hearing of Petitioner's Request for Agency Action ("RAA") is the only readily identifiable means of relief.

2. Given the failure of Respondent to properly provide "written notice… in advance to the drilling or operation of a well," per Utah Code Ann. 40-6-2 (11), to unleased owners within its own, internally decreed "DSU" [*sic*, "Drilling and Spacing Unit"] (*see Cause 176-05*, Response to Request for Agency Action ("RAA") and Exhibit D), Respondent has established a pattern and practice of moving too fast to even preserve its own rights (and the rights of its partners in the existing well, of which IPLLC is one), let alone the potential correlative rights of others. *See Cause No. 176-05*, Response to RAA, ¶ 5 and Exhibit C.

3. Given the insistence of the Respondent that its leasehold venting and flaring operations be allowed to proceed without delay or interference, and its continually evidenced preference for speed in its practices, it is inequitable to ask for *expedited* treatment in matters it considers "separate and independent" (*See Cause No. 176-05*, Whiting Oil and Gas Corporation's Reply to Respondent's Response to Agency Action, page 4) on the one hand – and *delay* a hearing on the fundamental ownership rights to the production from well itself on the other hand. Petitioners believe that both their Response in Cause No. 176-05 and their RAA in this Cause sufficiently establish the common nexus of facts underlying both Causes and renew their Request that the Causes be heard in parallel, if not merged altogether.

4. Petitioners agree with the Respondent's cited observation from *Cowling* (*see* Response to RAA, ¶8), to the extent that it applies in similar factual situations, *i.e.*, vertically drilled wells. As to the customary list of specific evidence typically presented in a Board spacing hearing, [1]

1. "The determination must, however, be based on geologic and reservoir engineering evidence pertaining to a number of factors, including; the reservoir's physical characteristics, such as the strength and nature of the pressures within the reservoir and the size and type of the producing formation; the porosity and permeability of the sands in

aside from being unnecessary to the outcome of that case and therefore *obiter dicta*, Petitioners assert a strict demand for precisely that list of evidence is inappropriately applied to the world of horizontal drilling. In contrast, reasoning from a more recent Utah Supreme Court case would indicate that granting spacing orders is more about advancing State policy (*i.e.*, protection of correlative rights) than processing hard data.[2] Even assuming that the Supreme Court intended that the *dicta* in *Cowling* generally apply to a horizontal spacing request, Petitioners intend to present or elicit testimony that unless and until substantially all of the *Cowling* factors are known *ab initio* with reasonable certainty by the operator, or in fact are *created* by the very process of horizontal drilling, that such development would not occur. Therefore, Petitioners believe that their RAA is *not* premature and is therefore not properly dismissed prior to a hearing on its merits.[3]

5. Respondent's assertion that some owners would be "adversely affected" by establishing a spacing unit that is too large is unconvincing and irrelevant. Petitioners sent notice to

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which the hydrocarbons are trapped and through which they must move; available technology, including methods and resources for secondary and tertiary recovery; and, far from least, economic considerations such as the market price of oil and gas and extraction costs." *Cowling v. Board of Oil, Gas and Mining, et al.*, 830 P.2d 220, 225-226 (Utah 1991) (*no citations in original*). No party in the case challenged, commented on, or argued about the validity or grounds of the *spacing* order in *Cowling*. In fact, all parties stipulated to it. *Id.* at 222. The holding in the case dealt with the retroactivity of the *pooling* order.

2. "In establishing 80-acre drilling units for the Greater Aneth Area, the [Oil and Gas Conservation] Commission [the predecessor regulatory body to the current Division of Oil, Gas and Mining] was concerned with both the specific goal of draining the Greater Aneth pool and the more general policies of "preventing waste, avoiding the drilling of unnecessary wells, and *protecting the correlative rights of interested parties*." Because the Commission was guided to a large degree by these general policies, it was not necessarily concerned with small-scale interruptions in the continuity of the Greater Aneth pool." *Harken Southwest Corp. v. Utah Board of Oil, Gas and Mining, et al.*, 920 P.2d 1176, 1179 (Utah 1996) (*internal editing notations omitted*)(*emphasis added*). Without this rationale, the Court would not have overturned the Board's decision regarding the tax status of the wells in question.

3. If Petitioners do not act now, when are they supposed to act? "We held in *Cowling* that an owner's failure to take action to establish and protect his or her interest in production prior to the entry of a spacing order constitutes a waiver of that interest until a drilling unit is established." *Adkins v. Board of Oil, Gas and Mining, et al.*, 926 P.2d 880, 884 (Utah 1996) (*internal editing notations omitted*).

all reasonably identifiable "interest owners" (as defined by Utah Admin. Code R649-1-1) in the Section (*See* Petitioner's Certificate of Service and Exhibit C – which will be supplemented at the hearing with additional return receipts received) and none of them have chosen to respond or appear. Also, the Board routinely modifies Spacing Orders to allow infill-drilling upon request and sufficient showing that more wells need to be drilled within a spacing unit. *See e.g.*, the Board's Order in Cause No. 139-84, *cited at* RAA, ¶ 9. Finally, the statutory requirement for spacing units is that they "may not be smaller than" a satisfactory area, which establishes a statutory preference to err on the side of larger units, not smaller. *See* Utah Code Ann. § 40-6-6 (3).

**WHEREFORE**, Petitioners respectfully move that the Board:

1. DENY Respondent's Motion to Continue Hearing; and

2. CONFIRM this Cause for hearing on February 25, 2015 in Salt Lake City, Utah; and

3. Providing for such other and further relief as may be just and equitable under the circumstances.

Respectfully submitted this 12th day of February, 2015.

By:_____

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The Board of Oil, Gas and Mining (the "Board"), having considered Whiting Oil and Gas Corporation's Motion to Continue Hearing and the Objection to same filed by International Petroleum Limited Liability Company, *et al*, and being fully informed on the premises and arguments therein, and for good cause shown, hereby determines that the Board:

1. DENIES Whiting Oil and Gas Corporation's Motion to Continue Hearing; and

2. CONFIRMS this Cause for hearing on February 25, 2015 in Salt Lake City, Utah.

For all purposes, the Chairman's signature on a faxed copy of this Order shall be deemed the equivalent of a signed original.

SO ORDERED, this _____ day of February, 2015.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

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Ruland J. Gill, Jr., Chairman

**CERTIFICATE OF MAILING**

I certify that I caused a true and correct copy of the foregoing document to be mailed via U.S. Postal Service and via electronic mail to the below named parties.

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Signed, this 12th Day of February, 2015.